SECRET

ARPA ORDER NO. 189-1

MEMORANDUM
RM-5729-1-ARPA
JANUARY 1969

AD 395924

PRISONERS OF WAR IN INDOCHINA (U)

Anita Lauve Nutt

SPECIAL HANDLING REQUIRED
NOT RELEASABLE TO FOREIGN NATIONALS
"The information contained in this document will not be disclosed to foreign nationals or their representatives."

STATEMENT #2 CLASSIFIED

In addition to security requirements which must be met, this document is subject to special export controls and each transmittal to foreign governments or foreign nationals may be made only with prior approval of
ADVANCED RESEARCH PROJECTS AGENCY (TIO)
WASH DC 20301

DDC
RELEASED
MAR 6 1969

The RAND Corporation
SANTA MONICA • CALIFORNIA

DECLASSIFIED 8 Sep 1992
by Darpa & DASD (POW/MIA)

DDC CONTROL
NO 99671

SECRET

COPY NO.

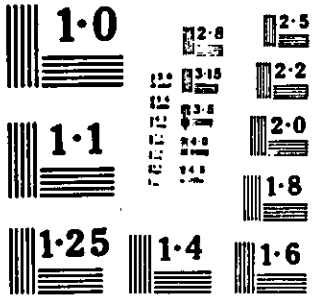
SECURITY MARKING

The classified or limited status of this report applies to each page, unless otherwise marked.
Separate page printouts MUST be marked accordingly.

THIS DOCUMENT CONTAINS INFORMATION AFFECTING THE NATIONAL DEFENSE OF THE UNITED STATES WITHIN THE MEANING OF THE ESPIONAGE LAWS, TITLE 18, U.S.C., SECTIONS 793 AND 794. THE TRANSMISSION OR THE REVELATION OF ITS CONTENTS IN ANY MANNER TO AN UNAUTHORIZED PERSON IS PROHIBITED BY LAW.

NOTICE: When government or other drawings, specifications or other data are used for any purpose other than in connection with a definitely related government procurement operation, the U.S. Government thereby incurs no responsibility, nor any obligation whatsoever; and the fact that the Government may have formulated, furnished, or in any way supplied the said drawings, specifications, or other data is not to be regarded by implication or otherwise as in any manner licensing the holder or any other person or corporation, or conveying any rights or permission to manufacture, use or sell any patented invention that may in any way be related thereto.

1 OF 2
AD395 924



NATIONAL BUREAU OF STANDARDS
MICROCOPY RESOLUTION TEST CHART

AD- 395924

SECURITY REMARKING REQUIREMENTS

DOD 5200.1-R, DEC 78

REVIEW ON 31 JAN 89

~~SECRET~~

ARPA ORDER NO. 189-1

MEMORANDUM
RM-5729-1-ARPA
JANUARY 1968

PRISONERS OF WAR IN INDOCHINA (U)

Anita Lauve Nutt

This material contains information affecting the national defense of the United States within the meaning of the espionage laws, Title 18 U.S.C., Secs. 793 and 794, the transmission or the revelation of which in any manner to an unauthorized person is prohibited by law.

This research is supported by the Advanced Research Projects Agency under Contract No. DAHC15 67 C 0112. Views or conclusions contained in this study should not be interpreted as representing the official opinion or policy of ARPA.

SPECIAL HANDLING REQUIRED: NOT Rreleasable TO FOREIGN NATIONS
The information contained in this document will not be disclosed to foreign nationals or their representatives.

DOWNGRADED AT 12 YEAR INTERVALS; NOT AUTOMATICALLY DECLASSIFIED. DOD DIR 5200.10

The RAND Corporation

GROUP-3
DOWNGRADED AT 12 YEAR INTERVALS;
NOT AUTOMATICALLY DECLASSIFIED

DDC CONTROL
NO 93671

~~SECRET~~

PREFACE

The present publication revises the earlier version of this Memorandum, published in October of 1968, which erred in two details concerning American personnel believed to be in Pathet Lao hands. Rather than burden the reader with the custody of a separate classified page indicating these errata, we are republishing the Memorandum.

Another detail has also been corrected -- the reference to Mr. Oudong Sananikone as "General." Mr. Oudong Sananikone is not to be, or ought not to be, mistaken for his brother, General Oudone Sananikone.

This Memorandum is the product of a continuing program of research undertaken by The RAND Corporation for the Advanced Research Projects Agency, Office of the Secretary of Defense, into various military-political aspects of war termination in Vietnam. It is based on the assumption that in the eventual settlement of the war the question of the release and exchange of prisoners of war and civilian internees is apt to be of major importance. The study reviews in detail the disposition of this crucial issue in the two previous peace settlements in Indochina, the Geneva Agreements of 1954 and the Laos Protocol of 1962, and critically examines the rationale and the effectiveness of the earlier provisions, as well as their likely or possible relevance to the requirements of the present situation. It concludes with a number of necessarily tentative recommendations.

The author, long a consultant to RAND's Social Science Department, is a former member of the U.S. Foreign Service, who served as political officer in the American Embassy in

Saigon from July 1954 until September 1956, during which period she became well acquainted with the operation of the International Control Commission (ICC) and its role in the implementation of the 1954 Geneva Agreements. Her earlier RAND RM-2967-ARPA, The Origins and Operations of the International Control Commission in Laos and Vietnam (U), April 1962, Secret, reflects that knowledge and experience.

Much of the account that follows, unless otherwise identified, rests on the published and unpublished reports of the ICC and on documents and files of the U.S. Government to which the author has had access. All facts and figures relating to 1968 are accurate as of May 1968, when the research for this Memorandum was completed.

An earlier RAND study, produced under the same program, is RM-5596-ARPA, Advantages and Risks of a Cease-Fire: Some Possible Enemy Perceptions (U), by S. Hosmer, K. Kellen, and V. Pohle, April 1968, Confidential.

SUMMARY

A major problem to be solved in forthcoming negotiations for a peace settlement in Vietnam concerns the release and exchange of prisoners of war and civilian captives held by the several combatants. In arriving at a policy on this question that would be both humane and in the best interest of the American and South Vietnamese side and at the same time would offer enough inducements to the other side to be potentially acceptable to Hanoi and the Viet Cong, negotiators for the United States and the Government of South Vietnam (GVN) might benefit by a critical look at the way in which the Geneva Agreements of 1954 and the Laos Protocol of 1962 approached this crucial problem and at how effective the provisions of these earlier settlements proved to be.

The present study is an attempt to review the handling of the prisoner issue on those two occasions, including the role of the International Control Commission (ICC) in this context, and to relate the lessons of that recent experience to the realities and imperatives of the present. Given the many uncertainties in the current negotiatory situation, the contingencies foreseen by the author and her recommendations for possible U.S. positions are necessarily speculative and tentative.

The text of the 1954 Geneva Agreements governing the settlement of the Indochina war in the three Associated States of Vietnam, Laos, and Cambodia limited itself specifically and exclusively to prisoners detained "at the coming into force" of the Agreements. The Communists found this to be a welcome loophole, which enabled them to avoid

surrendering prisoners claimed by the other side by simply declaring that many had been released prior to the cease-fire and therefore did not come under the terms of the Agreements. As a result, a very high percentage of the prisoners claimed by the French side were neither surrendered nor accounted for by the Viet Minh and the Pathet Lao.

The ICC's role as official intermediary in the exchange of prisoners probably helped initially to accelerate releases. Thereafter, however, though its investigations of Communist complaints resulted in many delayed releases from the Governments of the Associated States, the ICC's efforts to obtain additional prisoners from the Communists produced almost no results.

The 1962 Laos Protocol showed two significant changes from the 1954 Agreements: (1) At the insistence of the three Lao factions, the text made no reference to the exchange of Lao prisoners -- a matter deemed to be of concern only to Laotians. (2) The ICC was given no responsibility with respect to the release of any prisoners, Laotian or foreign.

After 1954, each side sought to establish subcategories of prisoners, usually in an effort to justify its refusal to release military or civilian captives. As the Agreements contained no guidelines for this contingency, the ICC developed ad hoc positions when confronted with such arguments, and set its own rules on how they should be handled. However, those of its interpretations that did not command unanimous acceptance but were adopted by majority vote usually were ignored by one party or the other: by the Communists if Poland cast the dissenting vote by the other side whenever Canada was in the minority.

(U) Observation of the past practice of Communist participants in the settlements of 1954 and 1962 would seem to justify several expectations as to attitudes and conduct that the parties to the present conflict are likely to exhibit in negotiating the issue of prisoners. These are some of the relevant assumptions:

(U) The North Vietnamese and the Viet Cong will try to avoid submitting complete nominal lists of prisoners. They will refuse to admit (as they have done so far) that North Vietnamese Army (PAVN) units have been operating anywhere outside North Vietnam. They will oppose giving prisoners a choice of destination at the time of release. They will try, throughout the negotiations, to use the prisoner issue as a means of sowing distrust between the United States and the Government of South Vietnam. In the actual release of prisoners, they will be guided by political objectives rather than by the terms of agreements.

(S) The South Vietnamese, in turn, are apt to take an independent and, possibly, an obstinate stand on the issue of prisoners. For they are likely to recall the serious violations of the 1954 Geneva Agreements by the Viet Minh; they have the advantage of holding large numbers of Communist prisoners; and they differ with some of the United States' interpretations of the 1949 Geneva Conventions on Prisoners of War and Civilian Persons.

(C) By analogy with the Laotian settlement of 1962, the Democratic Republic of Vietnam (DRV), the Viet Cong, as well as the GVN will probably oppose all non-Vietnamese participation in negotiations for the release of prisoners of Vietnamese nationality and all foreign involvement in controlling the implementation of any agreements that are concluded.

(S) The exchange of Vietnamese prisoners promises to be a long-drawn-out process, likely to be tied to a political settlement in South Vietnam. In its course, all parties probably will resort to subterfuge, including the subcategories of prisoners developed in 1954, in an effort to withhold certain prisoners. In view of the predictable length and complexity of negotiations for the exchange of Vietnamese prisoners, and given an outside power's limited ability to affect the outcome, it would be desirable not to tie the release of U.S. prisoners to that of Vietnamese captives but to keep the two issues separate throughout the deliberations. Indeed, the United States might decide actively to encourage the GVN to treat the disposition of Vietnamese prisoners as strictly an internal affair.

(S) With respect to American prisoners in Communist custody, the DRV, the Viet Cong, and the Pathet Lao will, in all probability, insist on negotiating separately and directly with the United States for their release. The price will be high, and will very likely include political and military concessions and possibly also the payment of reparations or ransom to the DRV. Insofar as negotiations with the North are concerned, monetary concessions would appear to be the least harmful to the U.S. interest and the least apt to arouse the GVN's distrust of American motives.

(S) The assistance of a third party could be useful to the United States (and acceptable to North Vietnam) in resolving specific, practical aspects of the prisoners issue. To this end, it might be well to explore with the French government the possibility of enlisting the help of Jean Sainteny, who has frequently and successfully served as his country's emissary to North Vietnam.

CONTENTS

PREFACE iii

SUMMARY v

Section
I. INTRODUCTION 1

II. BACKGROUND 3
1. The Geneva Settlement of 1954 3
Results in Cambodia 4
Results in Laos 6
Results in Vietnam 7
2. The Geneva Settlement of 1961-1962 14
Release of Foreign Prisoners, 1962 .. 18
Release of Laotian Prisoners, 1962 .. 20
Foreigners Captured in Laos After the 1962 Conference 22

III. CLASSIFICATION OF PRISONERS 25
1. Categories in the 1954 and 1961-1962 Agreements 25
1954 25
1961 25
1962 26
2. Subcategories of Prisoners 26
"Political Internees" 26
The ICC Position 27
Releases Prior to the Cease-Fire 28
The ICC Position 28
Released but Not Surrendered 29
The ICC Position 29
Criminal and "Mixed Cases" 29
The ICC Position 30
Military Prisoners or Civilian Internees? 30
The ICC Position 31
Escapees 31
The ICC Position 31
"Ralliés" and Deserters 32
The ICC Position 33
Deserters Seeking To Return 34
The ICC Position 34

IV. LESSONS OF THE PAST AND THEIR APPLICATIONS TO THE FUTURE 37
1. Nominal Lists of Prisoners 37
2. DRV Denial of PAVN Presence in Laos and South Vietnam 39
3. Choice of Destination 42
4. Dissension 43
5. GVN Interpretation of Agreements 45
6. Possible GVN Expulsion of Regroupees (C) 47
7. PW Riots 48
8. DRV Attitudes Toward PW Releases 49

V. NEGOTIATIONS FOR THE RELEASE OF PRISONERS 51
1. Prisoners of Vietnamese Nationality 51
An Internal Affair 51
The Possible Use of Dependents (C) ... 53
Probability of Releases 54
Conclusions 56
2. U.S. and Allied Prisoners 57
Possible Communist Terms 58
Possible U.S. Offers 59
Conclusions 62
3. The Role of a Third Party 63

I. INTRODUCTION

Future negotiations for the release of prisoners of war (PWs) and civilian internees (CIs) who are held by the two sides now fighting in Vietnam will probably prove to be much tougher and more complex than those in 1954. At that time, most of the 80,000 to 90,000 prisoners of various nationalities were under the control of one or the other of the two avowed principals to the conflict, France and the Democratic Republic of Vietnam (DRV), who had the power both to negotiate a cease-fire and to implement the conditions of the settlement. At present, however, no single party on either side combines this dual power with control of the majority of enemy prisoners. Furthermore, one of the principal belligerents holding prisoners, North Vietnam,[1] has thus far refused to admit the participation of its own forces in the conflict, despite the fact that many North Vietnamese troops have been captured in South Vietnam.

The negotiations to come will certainly be more difficult than those at the Laos Conference, in 1961-1962, when all but a handful of prisoners were Laotians, whose release was deemed a matter of concern only to the three Laotian parties to the conflict.

Whereas under the 1954 Geneva Agreements the International Control Commission (ICC) was responsible for controlling the release of all PWs and CIs, under the 1962 Laos Protocol it had no responsibility whatsoever with respect to prisoners, national or foreign. Before

[1] Referred to hereafter also as NVN or the DRV.

considering what, if any, role the ICC ought to play in the control of future prisoner exchanges, it would be well to examine the record of prisoner releases after the agreements of 1954 and 1962, respectively, and to review the positions taken by the ICC in those instances in response to claims and counterclaims put forth by both sides.[2]

---

[2]The numerous factual statements and estimates cited throughout this study in relation to the prisoner issue in the 1954 and 1961-62 Geneva settlements, unless they are specifically identified in individual footnote references, are based on published and unpublished ICC reports as well as on classified documents and files of the U.S. Government to which the author has had access.

II. BACKGROUND

1. THE GENEVA SETTLEMENT OF 1954

When the Geneva Agreements were signed, in July 1954,[3] only three states of the nine represented at the Geneva Conference -- France, Vietnam, and the USSR -- had ratified the 1949 Geneva Conventions on Prisoners of War and Civilian Persons. And of the three selected by the conferees to supervise implementation of the Agreements, only one state -- India -- had ratified the Conventions.

The Vietnam Agreement called for the release of all PWs and CIs held by either side. It specified that all prisoners, foreign and Vietnamese, were to be surrendered to "the appropriate authorities" of the other party. Once surrendered, prisoners were then to be given -- by their own party -- "all possible assistance in proceeding to their country of origin, place of habitual residence or zone of their choice." (Art. 21c.) The Agreement did not provide the safeguards against forcible repatriation that had been written into the Korean Armistice Agreement. There was no stipulation requiring the ICC to take custody of, or even to interview, those prisoners (foreign or Vietnamese) who might not want to be surrendered to the side from which they had been captured. On the contrary,

---

[3] For the texts of the Agreements ("On the Cessation of Hostilities" in Vietnam, Laos, and Cambodia, respectively) see "Miscellaneous No. 20 (1954)," Further Documents Relating to the Discussion of Indo-China at the Geneva Conference, June 16-July 21, 1954, Command Paper 9239, Her Majesty's Stationery Office, London, August 1954.

the ICC was specifically required to "control" the compulsory surrender of prisoners by the detaining power to the other side.[4]

The Laos and Cambodia Agreements of 1954 provided that only foreign prisoners were to be surrendered to the other side, presumably because there was to be no partition of those countries, and because the dissident fighting elements in each were supposed to be rapidly integrated into the national community. Nationals of Laos or Cambodia captured within either country were simply leased. However, there was no specific requirement that Laotians and Cambodians be released within their respective countries. Nor was there any provision for verifying that any releases that allegedly had taken place elsewhere -- for example, in North Vietnam -- were genuine and that the former prisoners' continued residence in the country of their release was voluntary.

Results in Cambodia

The Agreement set no time limit for the release of prisoners, foreign or national. It simply stated that all should be released "after the entry into force of the present Armistice Agreement." (Art. 8a.)

[4]The 1954 Geneva Agreements were drafted in French and the verb used was contrôler, which in that language means "to check or verify." Consequently, the term "to control," as used in the translation of these Agreements and in the title of the ICC, was intended to be understood in the meaning of the original, without the English connotation of restraint and regulation.

In January 1955, after both sides had claimed to have released all captives qualifying as PWs or CIs, the Viet Minh/Khmer Resistance Forces charged the Royal Government with holding 375 prisoners in violation of the Agreement. The government contended that over half of the 375 were ordinary criminals, and that 155 were Viet/Cambodians (Vietnamese nationals resident in Cambodia) who, having collaborated with the Viet Minh invaders, were subject to expulsion from Cambodia under Article 4c of the Agreement.

The ICC, upon examining the dossiers, concluded that 117 of these 155 were indeed Viet/Cambodians, who should have been withdrawn with the North Vietnamese troops in September 1954, but it did not insist that the DRV remove them. It took the position that it was up to the Cambodian government to negotiate with North Vietnam. After eighteen months of futile negotiations with the DRV, which clearly had no wish to take in the group, the Cambodian government simply released them, and so informed the ICC.[5]

As for 900 residual prisoners claimed by Cambodia, the DRV alleged that some had been released in Vietnam, while others, released in Cambodia, had subsequently migrated to Vietnam -- allegations that the North Vietnamese did not attempt to prove, and which were challenged by the Cambodian government. The ICC refrained from issuing a mandatory recommendation that the DRV substantiate the alleged releases.

---

[5] Fifth Interim Report of the International Commission for Supervision and Control in Cambodia, Chapter VI. (Hereafter, ICC reports will be referred to simply by name of country and number of report.)

Results in Laos

When the thirty-day period allowed for the release of prisoners had elapsed, no foreign prisoners had been released by either side, and "the bulk of the Laotian prisoners" remained unaccounted for.[6]

Shortly after the deadline, 109 North Vietnamese and 195 French Union prisoners were released. All exchanges of foreign prisoners took place in Thanh Hoa Province, North Vietnam, presumably because foreigners captured in Laos by Viet Minh/Pathet Lao (VM/PL) forces had previously been transferred to North Vietnam.

In June 1955, the ICC reported that "by and large most of the French nationals seem to have been released."[7] The Viet Minh/Pathet Lao had, in fact, surrendered 699 French Union prisoners, but had failed to account for 70 PWs.

As for Laotian prisoners, the French/Laotian side finally agreed that these, too, would be handed over in accordance with VM/PL demands,[8] even though the Laos Agreement did not require that these prisoners be surrendered to the other side. By June 1955, the Viet Minh/Pathet Lao had released only 152 such prisoners, leaving unaccounted for 968 PWs and 878 CIs, a total of 1,846. Though they claimed to have released 1,079 PWs and 61 CIs prior to the cease-fire, the French/Laotian side pointed out that the

---

[6] Laos, First Interim Report, p. 19, para. 89.

[7] Laos, Second Interim Report, para. 114.

[8] Laos, First Interim Report, paras. 88 and 90.

nominal list of those allegedly released did not correspond to its own list of missing prisoners.[9]

(U) The Communists, for their part, conceded that the French/Laotian side had released 220 VM/PL prisoners, but charged that it still held 692. The Communist figures were not broken down by either nationality or category.[10]

Results in Vietnam

(U) Prisoner releases in Vietnam were effected on the basis of two separate agreements: one, an informal understanding reached through Soviet and Chinese intermediaries immediately prior to the opening of the Geneva Conference; the other, a formal arrangement concluded during the Conference and incorporated in the final Agreement (Art. 21).

(U) Under the former, the French had reluctantly accepted the DRV's participation in the Geneva Conference, with the understanding that the Viet Minh would permit the French to evacuate their wounded from Dien Bien Phu.

(S) At the Conference, Ho Chi Minh's representative Pham Van Dong suggested in his first speech that both sides evacuate their seriously wounded. Three days later, however, when French negotiators arrived at Dien Bien Phu to make arrangements with the Viet Minh command for the actual evacuations, the latter tried to impose these additional conditions, not put forward at Geneva: (a) No repairs of

---

[9] Ibid., para. 100(d).

[10] Laos, Second Interim Report, paras. 113-115, and Appendix K.

the airstrip would be permitted that would allow the French to land C-47s. (b) The French would be allowed initially to evacuate only 450 wounded PWs.[11] (c) The French would not be permitted to evacuate any Vietnamese PWs. (d) During the evacuation, the French had to refrain from bombing Colonial Route 41 so as to permit the Viet Minh to evacuate their own wounded from Dien Bien Phu.[12]

(S) To facilitate rapid evacuation of wounded French prisoners, the French offered to repair the airstrip and to airlift Viet Minh wounded to any place specified by the North Vietnamese army. The DRV rejected this offer, but permitted the French to start evacuating wounded prisoners. During the first week, the French were able to remove only 133 of their wounded PWs, none of whom were Vietnamese. In response to U.S. and GVN protests at Geneva against this discrimination, the DRV claimed that the French had initially agreed to exclude Vietnamese PWs, a statement heatedly denied by the French.

(U) It was evident that the Viet Minh had two objectives in mind: to drive a wedge between the French and the Vietnamese, and to prolong the evacuation of French wounded from Dien Bien Phu as much as possible in order to keep Route 41 neutralized. Taking advantage of the bombing halt, they began moving troops and artillery along Route 41 to attack French positions in the Delta. The French promptly resumed the bombing.

---

[11](U) Exactly how many wounded were at the base when it fell is not known. One French authority states that 4,436 were wounded between March 13, when the Viet Minh launched their first attack, and May 5, immediately before the final assault. See Jules Roy, La Bataille de Dien Bien Phu. René Juilliard, Paris, 1963, p. 569.

[12]U.S. Embassy Saigon, Weeka 20, May 16, 1954 (Secret).

(U) The evacuation of the wounded French Union Forces proceeded slowly in May and June; eventually, the evacuees included some Vietnamese. Some wounded were moved by plane, but others were forced to walk 600 kilometers to freedom. Negotiations between the French and Viet Minh commands continued at Trung Gia, North Vietnam. Finally, on July 14 -- Bastille Day -- each side turned over 100 wounded prisoners to the other at Vietri and Mai-Thon (NVN).

(S) The Associated Press correspondent in Hanoi described the physical condition of the PWs as "catastrophic." Prisoners reported that of the men who had been sent on the "death march" from their camp near Dien Bien Phu fifteen had died daily, and they expected that those who were not returned promptly would die of cholera, dysentery, or malnutrition. French authorities in Saigon censored the stories of correspondents to delete realistic descriptions of the prisoners' condition, as well as such terms as "death march" and other statements made by the PWs themselves, in order to avoid distressing the families of prisoners and lessening the chances of release for those still in captivity.[13]

(S) During the Geneva Conference, the U.S. Air Force repatriated to France 500 French Union prisoners of war who had been wounded at Dien Bien Phu. Also, on September 9, 1954, a U.S. hospital ship, requested by the French to evacuate wounded prisoners of war, left Saigon with 725 sick and wounded aboard, of whom only 180 actually were

[13] U.S. Embassy Saigon, Tel. 202, July 16, and Tel. 230, July 18, 1954 (Secret).

PWs -- a reflection of the slowness with which the Viet Minh were releasing prisoners to the French.[14]

(U) It may be useful to recall that on May 10, 1954, the Communist command broadcast a communiqué on Dien Bien Phu that ended with the statement: "Applying President Ho Chi Minh's and the Democratic Republic of Vietnam's policy of clemency toward prisoners of war, the People's Army of Vietnam [PAVN] has treated prisoners of war well and has given them the necessary care."[15]

(U) The formal exchange of prisoners followed the conclusion of the Geneva Conference. Under the terms of the Agreement, the deadline for releases ended on August 26 in North Vietnam, August 31 in Central Vietnam, and September 10 in South Vietnam.

(S) According to French officials, the total n of missing French Union personnel was 30,000, of whom 17,000 were "known certainly to have been taken prisoner alive."[16] The same sources estimated that the DRV also held about 9,600 Vietnamese National Army (VNA) personnel, in addition to those Vietnamese prisoners who, as members of the French Union Forces, were included in the 30,000 PW figure.

(U) The French side, for its part, admitted holding many more prisoners than initially claimed by the DRV.

---

[14]U.S. Embassy Saigon, Tel. 487, August 7 (Secret), and Weeka 10, September 10, 1954 (Secret).

[15]Quoted in Roy, La Bataille, p. 557.

[16]U.S. Embassy Paris, Tel. 668, August 18, 1954 (Secret).

It eventually released over 68,000, the majority of whom were civilian interne[17]

(U) Prisoner exchanges, supposed to begin immediately after the cease-fire, were delayed because of differences over procedures. The Viet Minh, in particular, refused to begin exchanges until they had received a complete list of all PWs and CIs that the French expected to release. In mid-August, the ICC reported having been able to effect a compromise whereby the French agreed to prepare such a list and the DRV agreed to begin exchanges before receiving the full list. The deadline for exchanges in the North was then extended by eight days.

(S) As the Viet Minh began releasing prisoners, top French officials in Saigon and Paris privately expressed deep concern about publicity, both in France and in the United States, regarding the condition of the returned PWs, whose treatment by the Viet Minh had admittedly been "cruel and horrible beyond belief."[18] They urged -- as they had with respect to the PWs returned from Dien Bien Phu -- that the issue be soft-pedaled while releases were still going on, because past experience had shown that the Viet Minh "would prefer to either kill off prisoners or allow them

---

[17](U) Figures pertaining to PWs and CIs of Vietnamese nationality were considered only roughly accurate because of the nature of the war and its long duration. The use of regular and irregular forces, frequent shifts in allegiance, numerous desertions, and the large number of civilians alternately interned and released throughout Vietnam made accurate record-keeping of prisoners virtually impossible.

[18]U.S. Department of State, Office Memorandum, "General Ely's Views on the Political Situation in Vietnam," August 16, 1954 (Secret).

to die of illness and starvation than to release them if release is accompanied by widespread unfavorable publicity."[19]

(S) By August 29, the French had released 42,000 Viet Minh prisoners but had received only 6,155 PWs in return. Of these, only 134 were members of the Vietnamese National Army.

(S) Shortly after the September 9 deadline for all releases, the French reported having received 9,635 PWs of the French Union Forces. Of this total, 2,411 were French, 2,532 Foreign Legion, 3,661 African, and 1,031 Vietnamese. However, of the estimated 9,600 Vietnamese National Army prisoners held by the DRV, only 214 had been released.[20]

(S) Not included in the number of announced releases were five U.S. Air Force personnel who had been taken prisoner by the Viet Minh at Tourane, during the Geneva Conference, and released to the French -- and by them to the Military Assistance Advisory Group -- before the deadline. According to U.S. military authorities, the American PWs seemed to have fared better than the average prisoners of the Viet Minh: Although they all had suffered some degree of physical deterioration, "none appeared to be seriously ill."[21]

---

[19] U.S. Embassy Paris, Tel. 668, August 18, 1954 (Secret).

[20] U.S. Embassy Saigon, Weeka 38, September 18, 1954 (Secret). and U.S. Embassy Saigon, Tel. 908, September 7, 1954 (Secret).

[21] U.S. Embassy Saigon, Weeka 37, September 10, 1954 (Secret).

It should be noted that of the prisoners who were exchanged by both sides after the cease-fire, the great majority were released prior to, or shortly after, the deadline. Before the end of 1954, the French had turned over to the DRV 68,105 prisoners (9,071 PWs and 59,034 CIs by DRV count). Yet they were accused by the DRV of having withheld an additional 7,161 (6,708 PWs and 453 CIs).[22] On the other hand, the 14,032 prisoners (13,377 PWs and 655 CIs) whom the French claimed to have received from the DRV exceeded by more than 1,300 the number that the DRV claimed to have surrendered.[23] Nevertheless, the French contended that the DRV was still withholding 9,537 PWs, a figure that presumably did not include Vietnamese civilian internees and National Army personnel, for General Ely, the Commander-in-Chief in Indochina in 1954, later wrote in his memoirs that a minimum of 20,000 prisoners claimed by the French/GVN side had "disappeared." Of these, the General reported, 15,000 were believed to have been inducted into the PAVN. He did not speculate on the fate or indicate the nationality of the remaining 5,000.[24]

One year after the Geneva Conference, a French analysis of replies to inquiries submitted by the two sides as to the fate of the French/GVN and Viet Minh prisoners, respectively, who allegedly had not yet been returned or accounted

---

[22]Since the French had earlier admitted holding more prisoners than the DRV had initially claimed, the DRV probably based its charges on lists that the French themselves had submitted.

[23]Vietnam, First Interim Report, Appendix III.

[24]General Paul Ely, L'Indochine dans la Tourmente, Plon, Paris, 1964, p. 214.

for revealed these striking differences. In answer to the French/GVN claim of 30,373 outstanding cases, the Viet Minh maintained that, of these 4 per cent had died; 17 per cent had been handed over; none had escaped; 8 per cent had deserted to the other side;[25] and the fate of 71 per cent was unknown. The French, asked to account for 12,856 prisoners, reported 7 per cent deceased; 59 per cent handed over; 12 per cent escaped; no deserters; and 20 per cent whose fate and whereabouts were unknown.[26] According to the same French source, the Viet Minh failed to answer 1,580 of the inquiries addressed to them, while the French/GVN side replied to all but 209 of the inquiries it received. (In sharp contrast with these figures, the Viet Minh claimed to have satisfied all but 500 requests for information, whereas the French, they said, owed them 3,702 replies.)

In 1958 the ICC, still acting as a clearing house for inquiries about missing prisoners, began to explore the possibility of having the Red Cross societies of North and South Vietnam undertake the search for such prisoners in their respective areas, but it was never able to persuade Hanoi and Saigon to accept this solution.

2. THE GENEVA SETTLEMENT OF 1961-1962

When the Geneva Conference on Laos convened in May 1961, all but two of the fourteen states represented had

---

[25] This figure included 5 per cent who were repatriated by the DRV through China and the USSR.

[26] Information condensed from Vietnam, Fourth Interim Report, Appendix II. (Emphasis added.)

ratified the 1949 Conventions. The two exceptions were Canada and Burma.[27]

(U) With respect to prisoners, the U.S. objective at the Conference was to secure the immediate release of all PWs and CIs under conditions that preserved the principle of the captives' freedom to choose their ultimate destination. However, the Communist delegations strongly opposed the American proposals on three points:

(C) (1) The U.S. draft called for the release of all prisoners held by the three Laotian parties[28] or by "any member of the Conference." Since the Laotian parties were the only ones to be bound by the still-to-be-drafted cease-fire agreement, and since it was believed that some Laotians as well as foreign prisoners captured in Laos had been transferred to North Vietnam, the United States considered the quoted phrase a necessary stipulation to ensure the release of all prisoners.

(C) Both the People's Republic of China (PRC) and the DRV took exception to the phrase on the grounds that the conflict was a "civil war" and, consequently, no members of the Conference other than the Laotians themselves could possibly be holding prisoners. Their argument won out, as the phrase was omitted from the final Protocol.

(C) (2) Although the U.S. draft proposed that only foreign prisoners be released to the ICC for repatriation, it left the way open for the ICC to control releases also

---

[27]Canada signed the Conventions in 1949 but did not ratify them until 1965; Burma has never adhered to the Conventions.

[28]The Royal Lao faction, the Pathet Lao, and the Neutralists.

of Laotian prisoners by noting that the question would "require further consideration" by the Conference after the Lao factions had concluded the expected cease-fire agreement.

(C) The USSR suggested that the surrender of foreign prisoners might be handled through diplomatic channels or, if the United States preferred, through the ICC. Other Communist delegations concurred, the DRV delegate stating pointedly that his government had, of course, no direct interest in the matter; since there were no PAVN troops in Laos, there naturally were no PAVN prisoners to be turned over.

(C) The most unfriendly comments on the U.S. proposal came from the Indian delegate. He did not object to the transfer of foreign prisoners through either diplomatic or ICC channels, but he pointed out that foreigners who had intervened in Laos should not expect to be given "extra-territorial" rights any more than foreigners who "misbehaved" in the United States could expect to receive such special treatment here. The comment was not of a nature to encourage the United States to seek control of releases by the International Control Commission, which is chaired by India.

(U) The final Protocol provided that foreign military personnel and civilians[29] be turned over by the Royal (coalition) Government to representatives of their own governments. The ICC was given no role in the transfers.[30]

---

[29]The DRV then had an estimated 8,000 to 10,000 troops in Laos, some of whom, it was later revealed, had been captured by the Royal Lao forces. (See p. 19, below.)

[30]Protocol to the Declaration on the Neutrality of Laos (hereafter cited as Laos Protocol), Geneva, July 23, 1962

(C) As for Laotian nationals, the Pathet Lao categorically rejected any suggestion that the ICC might be asked to control their releases. The Pathet Lao, and also the Neutralists, had earlier turned down a proposal by the Royal Lao faction that the International Committee of the Red Cross (ICRC) supervise releases. Because most Conference delegates agreed that the establishment of modalities for the release of Laotian prisoners was solely within the competence of the Laotians, the final Protocol took no cognizance of the problem.

(C) (3) One reason for the U.S. proposal that foreign prisoners be turned over to the ICC was to ensure continuity of the freedom of choice guaranteed in the Korean Agreement. The U.S. delegate said that safeguarding that freedom was "a matter of principle for the United States" and had to be included. To support his positions, he referred to the 1954 Geneva Agreement on Laos, citing in particular Article 16c, which provided that foreign prisoners be given "all possible assistance in proceeding to the destination of their choice."

(C) But all Communist delegates, particularly those of China and the DRV, vigorously opposed granting freedom of choice. They insisted that prisoners be allowed to proceed only to their "country of origin." The Chinese picked up the U.S. delegate's partial quotation from the 1954 Geneva text and pointed out that the full text called for the surrender of prisoners to their own side before they were to be given their choice of destination. Even

---

(Art. 7), Command Paper 2025, Her Majesty's Stationery Office, London, May 1963.

the Indian delegate suggested that prisoners be returned to their "own countries."

(C) The final Protocol provided that foreign prisoners were to be turned over "to the Governments of countries of which they are nationals" before being allowed to "proceed to the destination of their choice."[31] After the delegates had agreed on this wording, the Chinese delegate noted that the "destination of their choice" meant their country of origin, "and cannot possibly have any other meaning."[32]

(C) Obviously, the Protocol as signed did not truly support the principle of freedom of choice, for it contained no reliable safeguard against forcible repatriation; a prisoner who was a national of a Communist country, once released to its government, could hardly expect to enjoy freedom of choice thereafter.[33]

Release of Foreign Prisoners, 1962

(U) Article 7 of the Laos Protocol called for the release of all foreign prisoners within thirty days after the Protocol was put into force, i.e., by August 22, 1962.

---

[31] Ibid.

[32] See documents of the International Conference on the Settlement of the Laotian Question, Geneva (May 16. 1961-July 23. 1962). U.S. Verbatim Minutes, 40th Restricted Session, LAOS/USVR/40, November 1, 1961 (Confidential).

[33] (C) It is worth noting that in forthcoming negotiations adoption of the exact wording of the 1962 Protocol might even provide the Communists with a pseudo-legal basis for the forcible repatriation of foreign prisoners. For example, if the VC/DRV side were to capture Cuban members of the U.S. Armed Forces, it might justify handing them over

(U) Actually, four British civilians (two doctors and two diplomats), captured by the Pathet Lao in May 1961, were released shortly after formation of the coalition government in Laos and almost a month before the signing of the Protocol. They reportedly showed the effects of a very long "walk to freedom."

(C) By contrast, despite repeated assurances by PL representatives that the prisoners claimed by the United States (5 U.S., 1 Filipino, and 2 Thai) would be turned over within "a few days" after the signing of the Protocol, the eight men were not released until five days before the end of the 30-day period. (The PL Vice Premier, Prince Souphanouvong, blamed the delay, first, on difficulties of transport and, later, on differences with his colleagues.) When eventually they were turned over by the Pathet Lao to the coalition government and by the latter to the U.S. Ambassador, the prisoners reportedly showed the physical effects of severe conditions of detention.

(U) On the deadline date for releases, the Royal Laotian forces, in a surprise move, turned over to the coalition government, for transfer to the DRV, six North Vietnamese prisoners of war and simultaneously released to the press the men's signed statements identifying the PAVN units with which they had entered Laos. Four of the prisoners asked to be returned to North Vietnam; two wished to remain in Laos. The DRV, however, having denied

---

to the Castro Government on the grounds that they were "nationals" of Cuba, not of the United States. By the same token, it might hand over to North Korea the 20 South Korean PWs in VC/DRV custody, contending that the Government of the People's Republic of Korea was the "national" government of Korea.

the presence of its troops in Laos, would not recognize the North Vietnamese as PWs, and therefore did not demand that all six be turned over to DRV representatives in accordance with Article 7 of the Protocol. It was obviously much more important to Hanoi to maintain the fiction of its nonparticipation in the armed conflict in Laos than to ensure the return of a few of its nationals or their right to be treated as prisoners of war.

Three weeks after the deadline for releases (possibly to offset the bad publicity that had resulted from revelation of the PAVN presence in Laos), the Pathet Lao turned over to the government four South Vietnamese prisoners who, they said, were ARVN regulars captured in Laos -- a charge that the Saigon government denied.

Release of Laotian Prisoners, 1962

In June 1961, a year before the end of the Laos Conference, leaders of the three Lao factions issued a joint communiqué in which they agreed that the release of Laotian prisoners would be an "immediate task" of the proposed provisional coalition government.[34] But they failed to set a deadline for releases, presumably because this was to be part of the cease-fire agreement (an agreement that was never concluded).

No information appears to be available about the number of prisoners claimed by the several Lao parties after the

[34]"Joint Communiqué of the Three Princes on the Problem of Achieving National Concord by the Formation of a Government of National Union," Zurich, June 22, 1961. See documents of the International Conference on the Settlement of the Laotian Question, Geneva (May 16, 1961-July 23, 1962). LAOS/DOC/18, June 26, 1961 (Confidential).

Laos Conference (probably because, during the fighting, no one kept records of forces missing or prisoners taken). Also, many prisoners were impressed into the captor's forces, and some were released and sent back to their villages.

(U) The Rightist forces, according to fragmentary reports, turned over to the coalition government 62 Lao prisoners at the same time that they surrendered the six PAVN PWs mentioned above. A month later, they turned over 55 "political prisoners," after the tripartite Mixed Commission for Integration of the Administration had called for the release of all such prisoners within two weeks. In mid-1963, when the Neutralists had broken with the Pathet Lao, the Rightists announced the release of neutralist General Amkha and other neutralist PWs who had been detained until then, twelve months after formation of the coalition government.

(C) No figures seem to be available on the number of prisoners released by either the Neutralist or the Pathet Lao forces. However, according to Mr. Oudong Sananikone, at present Counselor at the Embassy of Laos in Washington, when Neutralist Kong Le broke with the Pathet Lao, his forces released all captured members of the Rightist forces except those whom they had previously turned over to the Pathet Lao. The latter released some prisoners after the 1962 Conference but kept the hard-core anti-Communists, particularly those who were senior officers of the Royal Lao Army. These prisoners are believed to be detained in North Vietnam, but no messages have been received from them since their capture.

Foreigners Captured in Laos After the 1962 Conference

(U) The first instance of foreign civilians captured in Laos and held as "prisoners of war" after the 1962 Geneva settlement occurred in September 1963, when the Pathet Lao shot down an Air America C-46 carrying food to an isolated guerrilla unit in PL-held territory. As the plane was operating with the approval of only two factions of the tripartite Lao government -- the Rightists and the Neutralists -- the Pathet Lao maintained that it was doing so illegally.[35]

(U) The United States, unable to obtain information about the fate of the seven-man crew from the PL faction in the coalition government, thereupon appealed to the ICRC, which in turn referred the matter to the Lao Red Cross. The latter sent an inquiry to the ICC, which passed it on, with a covering letter, to the leader of the PL political faction, Vice Premier Souphanouvong. The Pathet Lao replied to the ICC charging that Air America, by overflying PL territory, had violated the Geneva Agreements; "documents" found on the captured crew members proved that the plane was engaged in military activities against PL areas, and the captives, therefore, were being considered "prisoners of war." (The allegedly incriminating documents, though promised, were never produced.)

[35](U) Because of the Communists' determination to control the Ho Chi Minh trail in Laos, the Rightist and Neutralist forces were never able to conclude with the Pathet Lao the cease-fire agreement that was to have integrated all Lao forces and territory after formation of the coalition government in June 1962. As a result, opposing forces remained intermingled in many areas.

(U) Subsequently, the PL radio stated that there could be no third-party mediators: The United States would have to deal directly with the PL "military" authorities regarding the release of the C-46 crew.[36]

(U) Not until seven weeks after the incident did the Pathet Lao provide a list of the crew, according to which two were dead (the U.S. pilot and co-pilot) and five had been captured (1 U.S., 3 Thai, and 1 Chinese UK subject).

(S) Shortly thereafter, the PL radio announced that the prisoners would be "tried by the People,"[37] but two weeks later PL Minister Vongvichit assured the ICC Chairman that the crewmen would only be "investigated."[38]

(S) Since then, despite repeated efforts, neither the United States nor its allies or such international agencies as the ICRC and ICC have been able to obtain the release of or even to communicate with the prisoners, to whose number has been added a U.S. civilian pilot shot down in 1966. In addition to these civilians, over 50 American personnel are listed as "missing" in Laos, some of whom may be held prisoner in PL territory. The Royal Government, for its part, has in its custody at least 50 PAVN prisoners of war captured while fighting in Laos in recent years.

---

[36]U.S. Embassy Vientiane, Tel. 546, October 25, 1963 (Secret).

[37]U.S. Embassy Vientiane, Tel. 564, October 31, 1963 (Secret).

[38]U.S. Embassy Vientiane, Tel. 600, November 14, 1963 (Secret).

PRECEDING PAGE BLANK - NOT FILMED.

III. CLASSIFICATION OF PRISONERS

1. CATEGORIES IN THE 1954 AND 1961-1962 AGREEMENTS

Like other aspects of a future settlement, the complexity of the prisoner issue, beginning with the simple matter of definition and categorization, is well illustrated by the earlier agreements.

1954

The three Geneva Agreements of 1954 referred to two categories of prisoners: "prisoners of war" (not further defined); and "civilian internees," a term "understood to mean all persons who, having in any way contributed to the political and armed struggle between the two parties, have been arrested for that reason or kept in detention by either party during the period of hostilities." (Vietnam, Art. 21b.)[39]

1961

In the Joint Communiqué issued in Zurich in June 1961, the three Lao Princes spoke of the proposed release of all "political prisoners and detainees." The term "prisoners of war" was not used, presumably because the parties had agreed to treat the release of Lao prisoners as strictly an internal matter, subject neither to decisions of the Laos Conference nor to the provisions of the 1949 Geneva Conventions.

---

[39] The Pathet Lao subsequently insisted upon drawing a distinction between "civilian" and "political" internees. (See p. 27, below.)

1962

In the Laos Protocol of 1962, the article dealing specifically with prisoners (Art. 7) referred to "foreign military persons and civilians." Elsewhere, the term "foreign military personnel" was used, and was defined in Article 1a as including "members of foreign military missions, foreign military advisers, experts, instructors, consultants, technicians, observers and any other foreign military persons, including those serving in any armed forces in Laos, and foreign civilians connected with the supply, maintenance, storing and utilization of war materials."[40]

2. SUBCATEGORIES OF PRISONERS

An examination of the various arguments used after the 1954 settlements by both sides to justify their refusal to release PWs and CIs, and of the positions taken by the ICC when confronted with these arguments, indicates just how complex the control of prisoner releases can become.

In the wake of a future settlement in Vietnam, we may expect to hear used again many of the same arguments that in the past produced the following subcategories of prisoners:

"Political Internees"

Ignoring the Geneva Agreements' definition of civilian internees, the Viet Minh and Pathet Lao designated as

---

[40] Laos Protocol, Art. 1a.

"political internees" all civilians in their custody who had participated in the struggle -- and professed to be holding very few of these. They contended that the large numbers of CIs claimed by the other side were not internees at all but simple civilians who had elected to remain in Communist territory, so that there could be no question of releasing or surrendering them.

As regards most of the CIs turned over by the French, on the other hand, the Communists argued that these had not participated in the struggle and therefore should never have been imprisoned and should not have been exchanged.[41]

That the Communists made a definite distinction between "political" and "civilian" internees was evident in the terms they proposed for exchanges in Laos: All "political" officers were to be exchanged in Sam Neua Province (PL territory), whereas "civilian internees" were to be handed over "in the provinces in which they were captured."[42] The Viet Minh/Pathet Lao leaders probably wanted to make certain that they recovered trained political cadres, whom they needed for future assignments, but were content to leave the average PL sympathizer in his normal place of residence, where his influence -- and vote -- could be most valuable.

The ICC Position

The ICC took no position on the creation of the subcategory of "political internees" except to point out that it increased the difficulty of reconciling claims and counterclaims.

---

[41] Laos, First Interim Report, paras. 100(f) and 101(b).

[42] Ibid., paras. 88(c) and (d).

Releases Prior to the Cease-Fire

The DRV contended that many Vietnamese prisoners claimed by the other side had, in fact, been released in North Vietnam prior to the cease-fire and, consequently, did not qualify as prisoners under Article 21, which covered only those persons detained "at the coming into force" of the Agreement.[43]

It should be noted that the quoted phrase left the way open for what a member of the Legal Section of the ICRC has called "transformations by authority" and "voluntary transformations," both of which would automatically result in loss of PW status, which is prohibited under Articles 5 and 7 of the 1949 Geneva Convention on Prisoners of War.[44]

The ICC Position

The ICC frankly conceded that it had no way of verifying the large number of releases allegedly made by the DRV in its territory prior to the cease-fire. When the French Command reported a specific case -- the detention of 141 South Vietnamese officers in PW camps in North Vietnam over a year after the release deadline -- the ICC investigated the complaint and concluded that the allegations had not been proved. However, it called on the DRV to allow 89 of these officers and their families to choose their zone of residence, on the assumption that these 89

---

[43] Vietnam, Fourth Interim Report, para. 12.

[44] René-Jean Wilhelm, "Can the Status of Prisoners of War Be Altered?" in Revue Internationale de la Croix-Rouge, July-September 1953; English text reprinted by the ICRC. Geneva. 1953. In the 1952 Laos Protocol, the earlier loophole was closed insofar as foreign prisoners were concerned,

apparently had been prevented from exercising this choice during the regroupment period. When the DRV rejected the recommendation, it was cited by a majority (Indian and Canadian) of the Commission for failure to cooperate with the ICC.[45] But the South Vietnamese officers and their families remained in North Vietnam.

Released but Not Surrendered

In Vietnam, each side accused the other of releasing prisoners in violation of Article 21c by failing to surrender them to the authorities of the opponent. Each side either ignored the charges or contended that prisoners thus released had not wished to be surrendered.

The ICC Position

The Commission ruled that failure to hand over prisoners to the other side violated the Agreement, as indeed it did. Most ICC citations based on that ruling occurred after 1954 and were directed against South Vietnam (often by an Indian-Polish majority vote). The imbalance was due to the fact that the South continued to release prisoners over a period of several years, often under ICC pressure, whereas the North simply maintained that it no longer held any prisoners, despite reliable reports to the contrary.

Criminal and "Mixed Cases"

After the deadline for the release of prisoners, the governments of Cambodia and South Vietnam still held a

---

for Art. 7 called for the surrender of all foreign military and civilian personnel captured or interned "during the course of hostilities."

[45] Vietnam, Seventh Interim Report, para. 32.

number of prisoners who, they claimed, were neither PWs nor CIs but ordinary criminals or "mixed cases" (those guilty of a criminal offense in addition to collaborating with the enemy).

The ICC Position

The ICC insisted upon its right to examine court and prison records in both Cambodia and South Vietnam to determine the charges against these prisoners. The ICC took the position that, if a criminal act (such as arson, kidnapping, and assassination) for which a prisoner was detained was committed during the hostilities and was related to the political/military conflict, the prisoner was eligible for release under those terms of the Geneva Agreements that prohibited reprisals.

Under ICC pressure, the Cambodian government set up a "Pardon Board" to review mixed cases, and eventually granted amnesty to 535 of the 818 prisoners so designated.[46] In South Vietnam, many were freed by amnesty. But the GVN ignored ICC recommendations for the release of many others, particularly when the recommendation resulted from an Indian-Polish majority vote.

Military Prisoners or Civilian Internees?

Some members of the Vietnamese National Army who had collaborated with the Viet Minh were detained by the GVN after the deadline for prisoner releases on the grounds

[46] Cambodia, Second Progress Report, paras. 13-16.

that they were neither PWs nor CIs but violators of the GVN's military laws, who should be punished accordingly.

The ICC Position

By a majority vote (Indian-Polish), the ICC concluded that these military prisoners were, in fact, "civilian internees," who should be released under Article 21b of the Geneva Agreement. The arrest and conviction of a member of the armed forces by his own party were said not to rule out his being classified as a "civilian internee" (as defined in Article 21b), because any Vietnamese imprisoned for having contributed to the political and armed struggle between the two parties in Vietnam was covered by that article, "no matter under what law he was so convicted and no matter what his status was at the time of arrest and conviction." Canada dissented.[47]

Escapees

Some prisoners of war detained by the DRV after the deadline for releases escaped and sought asylum with the ICC.

The ICC Position

Although the number of persons seeking asylum was reportedly small, the ICC ruled that it was "not possible or desirable" for the ICC to grant asylum.[48] (In all probability the decision was taken in the knowledge that, if asylum were granted, the likely number of applicants -- would-be refugees as well as PW escapees -- would overwhelm the ICC's facilities.) Instead, a PW escapee should

[47] Vietnam, Sixth Interim Report, para. 36.

[48] Vietnam, First Interim Report, para. 74.

be returned to the custody of the local authorities (from whom he was seeking to escape) while the ICC conducted its investigation, with the understanding that those authorities would make him available to the ICC upon request.

It is hardly surprising that many of these escapees, when next they appeared before the ICC (often after great delays and repeated requests to the DRV), retracted their earlier charges against the side they had once sought to flee.

"Ralliés" and Deserters

The Viet Minh maintained that hundreds of European and African PWs and thousands of Indochinese military personnel had rallied to their side and should not be turned over to the French Command. Rather, they should either be allowed to remain in North Vietnam or be repatriated by the DRV to their countries of origin. Though it was generally known that many missing military personnel from the French Union Forces and the Vietnamese National Army had indeed rallied to the Viet Minh, the French Command contended that a number of those claimed as ralliés by the Viet Minh were simple deserters and men who had been brainwashed during a long and painful captivity or had been forcibly detained by the PAVN.

According to ICC figures, 451 foreign ralliés or deserters were repatriated by the North Vietnamese through China. As many of these repatriations involved refugees from Communist-controlled Central Europe, and some took place after the deadline for prisoner releases (some as much as two years later), it is highly improbable that all or

even most were voluntary.[49] The DRV ignored the ICC's request for nominal lists of all foreign ralliés and all those who had been or were to be repatriated.

The ICC Position

The ICC stated that it was observing the repatriation operations to make certain that no foreign PWs would be forcibly repatriated.[50] The Commission did not, however, insist that the DRV produce the alleged foreign ralliés and deserters promptly after the cease-fire, a procedure that might have enabled it to ascertain the prisoners' wishes at an early date. Although in some cases ICC teams were allowed to question groups about to be repatriated,[51] the questioning was strictly circumscribed by the DRV and took place after the prisoners had been in North Vietnam for many months and were on the point of entering China under PAVN escort. Since the ICC had ruled against granting asylum, prisoners were not likely to seek it at that point. In a number of cases, the DRV informed the ICC of repatriations only post factum.

The ICC made no attempt, and indeed would have found it impossible, to check on the 15,000 to 20,000 Vietnamese PWs who, the DRV claimed, had rallied to its side.

---

[49] In 1953, the DRV was known to have shipped Foreign Legion PWs back to their countries of origin in Central Europe, where they were tried by People's Courts and executed.

[50] Vietnam, Third Interim Report, para. 7; Fourth Interim Report, para. 8.

[51] Vietnam, Sixth Interim Report, para. 30.

Deserters Seeking To Return

The French and Viet Minh commands debated for many months on what should be done about deserters from the French Union Forces still held by the Viet Minh who had made known their wish to return to the French side. Between February 1955 and July 1956, the DRV finally turned over to the French more than 400 such prisoners, but stipulated that it would surrender no more if the French took any disciplinary action against the deserters. The French refused to accept this condition, reserving the right to discipline non-Vietnamese deserters under French military law and to deal with Vietnamese deserters from the French Union Forces in similar fashion if "the motives for desertion were not established to be political."[52] After they did, in fact, punish several returned deserters, the DRV carried out its threat by refusing to turn over any others, notably twenty-six men who had already applied for transfer to the French Command. Asked about them by the ICC, the Viet Minh contended that these twenty-six no longer wished to be transferred, but refused to let them be interviewed by the Commission.

The ICC Position

The Commission repeatedly asserted that it was "not concerned under the Agreement with the problem of deserters."[53] It extended its good offices to mediate between the parties, but did not issue recommendations that would have made it mandatory for the DRV to produce deserters who

---

[52] Vietnam, Seventh Interim Report, para. 35.

[53] Vietnam, Fourth Interim Report, para. 8.

had first expressed the wish to return and then had allegedly changed their mind; it merely "suggested" that the DRV do so -- a suggestion that was ignored.

The ICC did urge the French to agree not to punish deserters in order that they might continue to be returned by the DRV. When the French refused to heed that suggestion, the Commission said that it would take no further action "unless specific cases, where the persons concerned had been previously claimed as prisoners of war, were brought to its notice."[54]

With respect to Vietnamese deserters, the ICC took the position that they could not be punished after they had been returned, because they were protected by Article 14c, which prohibited reprisals for activities during the hostilities.

---

[54]Vietnam, Seventh Interim Report, para. 34. The Geneva PW Convention does not deal with deserters, but neither does it permit a change in the status of PWs "from the time they fall into power of the enemy until their final release and repatriation." Thus a combatant who wanted to be treated as a deserter would have to declare himself such at the time he joined the enemy, but would not be able to do so after months or years of captivity. See Wilhelm, "Can the Status of Prisoners of War Be Altered?" pp. 28-31.

PRECEDING PAGE BLANK - NOT FILMED.

IV. LESSONS OF THE PAST AND THEIR APPLICATIONS TO THE FUTURE

(U) In the forthcoming negotiations for peaceful solutions to the present war in Vietnam, some of the policies pursued in the past as well as certain courses of action taken (or rejected) by North or by South Vietnam may prove relevant and illuminating. This section of the Memorandum is an attempt to relate past experience to the problems ahead. To set off the historical analysis from its highly speculative applications to the present conflict, the former is single-spaced.

1. NOMINAL LISTS OF PRISONERS

(U) In the past, the Viet Minh (and the Pathet Lao) have consistently refused to supply nominal lists of all enemy PWs either before, during, or after negotiations. Although they submitted partial lists after the 1954 Conference, they indicated, as already mentioned, that 70 per cent of the prisoners claimed by the French/GVN side were "unknown" to the PAVN. General Ely, who delayed in making a formal protest about the shocking physical condition of returned French PWs for fear that the Viet Minh would not return the remaining prisoners, has noted in his memoirs that the delay was further prolonged by the difficulty of obtaining from the PAVN complete lists of French prisoners of war who were living or had died in captivity. The issue was compounded by the fact that such lists were even harder to come by for Vietnamese PWs, many of whom had joined PAVN units either voluntarily or under duress.[55]

(S) The French, for their part, having given to the DRV the names of prisoners they were prepared to surrender, then found that they could not always produce the number promised. For example, shortly before the deadline for

[55] Ely, L'Indochine dans la Tourmente, p. 214.

releases, French authorities discovered that they had promised to return from the Hué area about 1,000 more North Vietnamese PWs than they now had on hand. Apparently concerned lest the Viet Minh respond to the shortage by refusing to release prisoners from the French Union Forces, they asked GVN authorities to turn over Viet Minh civilian prisoners to enable them to fill the quota. When this request was refused, the French sought to persuade CIs to volunteer, but only 100 of these were willing to pose as PWs in order to be repatriated to the Viet Minh zone.[56]

(C) It is very unlikely that any one of the Communist commands today -- the PAVN, the Viet Cong, or the Pathet Lao -- has an accurate list of those of its own men who were taken prisoner during the hostilities. Many have been released by their captors, and some were subsequently recaptured. In all probability, however, the three commands have compiled lists of all captured U.S. and allied personnel, military and civilian, but it is doubtful that they will produce these lists during the negotiations or even immediately thereafter, unless to do so were to be distinctly to their advantage in the bargaining. If, for example, the United States should offer to withdraw some of its forces in exchange for U.S. prisoners,[57] and if the Communists were receptive to such an offer, it might be tied quantitatively to the number of prisoners surrendered (i.e., so many U.S. personnel withdrawn per prisoner released), and it would then be to the advantage of the

---

[56](U) U.S. Embassy Saigon, Tel. 937, September 9, 1954 (Secret). Such maneuvers accounted for some of the discrepancies between the number of PWs and CIs allegedly turned over by one side and the number reportedly received by the other.

[57](U) Throughout the text, references to negotiations for the release of U.S. prisoners are meant to include any allied (non-Vietnamese) prisoners in Communist hands.

Communists to produce lists of their U.S. captives and to release them promptly.[58]

2. DRV DENIAL OF PAVN PRESENCE IN LAOS AND SOUTH VIETNAM

(U) It has been a consistent policy of the DRV to deny the presence of its troops outside North Vietnam even when it would appear to be undeniable.

(U) At the 1954 Conference the DRV denied having troops in Cambodia, but it subsequently withdrew 2,384 men under ICC supervision. At the 1962 Conference it denied the presence in Laos of an estimated 8,000 to 10,000 PAVN troops. Thereafter, it withdrew some forces surreptitiously and left many others in PL-controlled territory. Only 40 "technicians" were admittedly evacuated through the ICC checkpoint.[59]

(S) Currently, too, the DRV refuses to acknowledge that 50 combatants captured in Laos since 1962 are members of the PAVN, and even goes so far as to deny that they are North Vietnamese, two facts admitted by the prisoners themselves.

(S) Similarly, having consistently denied the presence of its military forces in South Vietnam, the DRV refuses to concede that the 2,500 North Vietnamese prisoners now held by the GVN are PAVN troops and, therefore, prisoners of war.

(S) This denial of the presence of any PAVN units in South Vietnam may prove to offer some advantages to our side. If, for instance, the North Vietnamese persist in their contention that they are not a belligerent party, they cannot then expect to participate in any mixed

---

[58] For a further discussion of such a possible U.S. offer and some of its implications see pp. 59-60.

[59] ICC/LAOS. Message No. 20. October 22, 1962.

commissions that may be established to supervise implementation of a cease-fire agreement (as in 1954), though they may still be bound (as in 1962) by the terms of an international settlement to which they are a party.

(U) After the 1954 Geneva Conference, Cambodia, Laos, and South Vietnam deeply resented the continued presence of uniformed PAVN officers on their territory. But the DRV, which together with its cosignatory of the cease-fire agreements was responsible for implementation of the military clauses, had legitimate grounds for keeping senior PAVN officers, and political cadres posing as interpreters, in the Associated States, where they served as members of the Joint Commission and its subcommissions and teams, as liaison officers attached to the ICC headquarters and its investigating teams, and as members of "Graves Registration" teams.

(U) As a result, the DRV was able not only to play an often decisive role in the formulation of policy and the development of procedures relating to implementation of the Agreements, but also to strengthen its control over the local Communist organizations, and to continue "showing the flag" in the three countries from which Viet Minh forces supposedly had been withdrawn under the Agreements.

(U) Although the Viet Minh used a variety of arguments to justify extending their presence in the three countries, the governments of those states either rid themselves of the PAVN members as soon as possible by dissolving the joint bodies,[60] or curtailed the impact of the Communist representatives by strictly limiting their number and their freedom of movement.

(U) After the 1962 Geneva Conference, unlike the earlier one, there was no question of allowing PAVN members to join any mixed commissions, as the DRV, despite the presence of its combat forces in Laos, was not an acknowledged belligerent.

---

[60] (U) See A. L. Nutt, Troika on Trial, a study of the ICC prepared for the Office of International Security Affairs, Department of Defense, September 1967, pp. 178-188 (Classification pending -- For Official Use Only).

(S) In the present situation, regardless of whether the DRV acknowledges, or continues to deny, the presence of its forces in Laos and South Vietnam, there obviously is no solution that would either ensure the total withdrawal of North Vietnamese forces after a settlement or render the DRV unable to influence the local Communist apparatus. But the North's repeated public denial of its combat role would serve to justify its exclusion from any body entrusted with the supervision of a settlement following a cease-fire if the United States should want to restrict such supervision either to local parties (the ARVN and VC in South Vietnam; the Laotian National Army and Pathet Lao in Laos) or to those belligerents, foreign and native, who admit to having been party to the conflict.

(S) If the foregoing constitutes a certain advantage for the U.S./GVN side, there are also disadvantages arising from the DRV's denial of the PAVN presence. Not only would the DRV's admission of its true role be useful in bolstering our moral position (quite apart from correcting the historical record), but by denying the possible existence of PAVN prisoners of war Hanoi is limiting our use of such PWs for bargaining purposes.

(S) At present, the GVN has de jure and de facto custody of about 2,500 PAVN prisoners of war. Some were captured by the ARVN, while others were taken by U.S. forces and then transferred to the GVN. Under the Geneva Convention, the United States has a continuing responsibility for the latter group that would require it "to take effective measures," or to request their return, if the ICRC were to find that the GVN had failed to carry out

the provisions of the Convention "in any important respect."[61]

(S) The United States itself has custody of fourteen of an original seventeen North Vietnamese seamen captured during a naval engagement off North Vietnam.[62] The seventeen were the only North Vietnamese recognized by the DRV as military prisoners, an acknowledgment probably due to the fact that they were captured, not on South Vietnamese soil, but, according to Hanoi, "illegally" in international waters while on a peaceful mission.

3. CHOICE OF DESTINATION

(S) The Communists have tended to use every means at their disposal so as not to give PWs their choice of destination. As mentioned earlier, the DRV took advantage of the loophole in the 1954 Agreement to avoid surrendering large numbers of prisoners of war to the French/GVN side, yet at the same time demanded that the French give up all Viet Minh prisoners. In 1962 the Communists strongly opposed granting PWs a choice of destination in the Laos Protocol. As the relevant clauses in the proposed draft were to affect only a handful of Western and allied prisoners of the Pathet Lao, the Communists presumably were primarily reaffirming their opposition to the principle of free choice as a matter of policy.

(S) If all PWs now held in Vietnam and Laos were to be granted a choice of residence, this would probably operate to the disadvantage of the Communists. In any

---

[61] See "Geneva Convention Relative to the Treatment of Prisoners of War," August 12, 1949, Article 14. Also, U.S. Department of State Publication 8275, Vietnam Information Notes, No. 9, "Prisoners of War," August 1967.

[62] (S) Three of the seventeen were released in response to the DRV's release of three U.S. pilots.

negotiated settlement, therefore, we may expect them again to oppose such a proviso (whether applicable to foreign or to native PWs) unless, like the text of the 1962 Protocol, it is safely circumscribed so as to grant this freedom of choice only after (rather than before) the prisoner has been surrendered to the side from which he was captured.

(S) Under present circumstances, the United States, too, has reason to favor such a provision. Requiring that all prisoners be surrendered before they are allowed to choose their country of residence is a means of preventing phony or forcible defections among American prisoners of war -- obviously a more important end, from the U.S. point of view, than guaranteeing freedom of choice to PAVN, Viet Cong, and Pathet Lao prisoners. Consequently, the United States will find it advantageous, in a future settlement, to support terms for the release of prisoners that are similar in this respect to those included in the agreements of 1954 and 1962.

4. DISSENSION

(S) It is not unlikely, during negotiations for the release of prisoners of war, that the DRV will try to provoke distrust and dissension between the GVN and the United States much as it did between the South Vietnamese and the French in 1954.

(U) In 1954, as mentioned earlier, the DRV refused to permit the evacuation from Dien Bien Phu of wounded Vietnamese prisoners and falsely claimed that the French had agreed to exclude them, in an ugly attempt to sow bitterness and distrust between France and the GVN at the very outset of the Geneva negotiations. Its further refusal to reconsider its position until the French had agreed

to closed meetings with a PAVN representative at Geneva to resolve the impasse and to discuss the general issue of PW exchanges was certainly not designed to reassure the GVN.[63]

(U) There were other causes for irritation and distrust. At the time of the Geneva Conference, the PAVN and French High Commands met at Trung Gia, north of Hanoi, to discuss the military terms of a cease-fire. On the French side were GVN delegates instructed by Saigon to discuss only PW exchanges. Meetings were held twice daily: In a plenary session, attended by Viet Minh, French, and Vietnamese delegates, and a restricted session, attended only by the Viet Minh and French chief delegates and their interpreters. At the plenary sessions, the PAVN had so arranged the seating that the five French officers faced the five PAVN delegates, while the three GVN officers faced empty chairs. As a further slight to the GVN, the PAVN guards saluted French but not Vietnamese delegates.[64]

(U) Later on, when most French PWs were released by the Viet Minh whereas the vast majority of Vietnamese prisoners were not, the South Vietnamese were quick to assume that the French had failed to protect the GVN's interests with the necessary vigor not only at Geneva but at Trung Gia, in the Joint Commission, and vis-à-vis the ICC.

(U) Repeatedly, the actions of the Viet Minh were designed to show both their acceptance of the ex-enemy, France, as a potential future ally with whom they were willing to make deals, and their rejection of the GVN as an "illegal," temporary puppet regime.[65]

---

[63](U) The PAVN negotiator who met with the French was Colonel Ha Van Lau, head of the PAVN Liaison Mission to the ICC since 1954, Standing Member of the "Committee of Inquiry" established in North Vietnam in 1966 to investigate "crimes resulting from American air raids" (see p. 60 below), and second-ranking member of the DRV negotiating delegation now in Paris.

[64]U.S. Consulate Hanoi, Tel. 26, July 8, 1954 (Secret).

[65](U) A week after the Geneva Conference, Viet Minh elements paraded in Saigon carrying French as well as DRV

(S) During the preparatory meeting of ICC member-states, held in New Delhi immediately after the Geneva Conference, the chief North Vietnamese delegate privately asked his GVN counterpart why he continued to support the Bao Dai regime when the French were already supporting the DRV. At the general meetings, the cordiality of French and Indian officials toward the DRV delegates, two of whom were placed at Nehru's dinner table, and their noticeable coolness toward the GVN delegates (none of whom was seated with Nehru) seemed to lend credibility to the DRV delegate's claim.

(S) There is good reason to believe that in the course of the present negotiations the DRV and the Viet Cong will try to undermine South Vietnam's confidence in U.S. intentions. In view of their past experience, the South Vietnamese are likely to show strong resentment if the Communists succeed in extracting from the United States, in exchange for the release of U.S. prisoners, concessions that materially increase Communist strength, seemingly weaken the security of South Vietnam, or appreciably diminish the GVN's chances of securing from the Communist side concessions that would be of greater interest to South Vietnam than the release of American prisoners.

5. GVN INTERPRETATION OF AGREEMENTS

(S) We can expect the South Vietnamese central and provincial authorities at times to be as recalcitrant and as uncompromising as the Communists with regard to the release of VC and DRV prisoners.

---

flags, in an obvious attempt to increase the existing tension between the GVN and the large French community in the capital.

(U) After the 1954 settlement, the GVN often refused to accept even unanimous ICC interpretations of the Geneva Agreements when these applied to South Vietnamese civil or military prisoners in their custody, or to implement mandatory ICC recommendations for the release of such prisoners even when the French Command had acknowledged the accuracy of the interpretations and the fairness of the recommendations. Also, in a number of instances, provincial authorities of the GVN categorically refused to implement ICC recommendations accepted by the central government, especially when these called for the release of CIs known to such local authorities as key Viet Minh political organizers in their territory. In cases where the GVN had not fully concurred with all the terms accepted by the French, it not infrequently refused to implement agreements concluded by the Joint Commission. Thus, for example, it rejected certain provisions of the Graves Convention and the DMZ Protocol, which had been signed by both the French and the Viet Minh High Command.

(S) In the more recent past, the GVN's determination to use its own independent interpretation of agreements was evident in its prolonged refusal to deal with military prisoners as "prisoners of war." Instead, they were officially and physically labeled "Communist Rebel Combat Captives," in violation of the Geneva Convention, of which the GVN is itself a signatory.

(S) If, as a result of future negotiations, the South Vietnamese are required (a) to implement agreements to which they were not a full party, (b) to abide by terms accepted only under strong pressure from their allies, or (c) to accept interpretations of international conventions with which they do not concur, we can expect to meet much the same unwillingness to heed American advice as the French encountered after 1954. The present GVN authorities might be particularly recalcitrant; but even if there were to be a coalition, the non-Communist element in such a government, as well as local authorities and the ARVN, would hardly be more amenable to American guidance under those conditions.

6. POSSIBLE GVN EXPULSION OF REGROUPEES (C)

(S) Unless a coalition government, or a decidedly more flexible government than the present one, is in power in Saigon after a settlement has been reached, it will not be surprising if GVN authorities demand that "regroupee" PWs who have remained strongly pro-Communist be compelled to return to North Vietnam upon release, even if such PWs insist -- predictably, with support from the NLF and the DRV -- upon their right to remain in the South, their zone of origin.[66]

(S) Although the GVN maintains that Vietnam is one nation, over which only the Government of the Republic of Vietnam has legitimate jurisdiction, or perhaps because of this very argument, it may justify the expulsion of regroupee PWs on grounds somewhat similar to those used by the governments of Cambodia and Laos in demanding the expulsion of Viet/Cambodians and Viet/Laotians in 1954: A Saigon government may argue that, since the regroupees' allegiance has been to the DRV rather than to the GVN, as demonstrated by their joining the PAVN in aggression against the South, they should be expelled to North Vietnam along with PAVN forces and PAVN prisoners.

(S) Such expulsion of South Vietnamese to the North would not be new. It may be recalled that in 1955, shortly before the deadline for final regroupment under the Geneva

---

[66] (U) "Regroupees," in the sense in which the term is used here and in earlier RAND Memoranda on Vietnam, are the estimated 90,000 Southern Communist troops who were moved to North Vietnam as part of the 1954 settlement. Many of them, after being trained in the North, were eventually reinfiltrated to the South to serve in the present war.

Agreement, the GVN deported to the North certain members of the Saigon pro-Viet Minh "Movement for the Defense of Peace." And more recently, they deposited across the 17th Parallel a small group of professional men accused of drumming up support for DRV objectives in South Vietnam.

7. PW RIOTS

(S) It would not be surprising if, during the cease-fire negotiations, Communist prisoners were to riot in PW camps in South Vietnam in the hope, simply, of embarrassing their captors. A captured enemy document reveals that VC prisoners in at least one area of South Vietnam have been urged to "revolt and break up prisons."[67] There is also the possibility that Communist PWs may riot once the negotiations are over, to register opposition to any agreements affecting their release. Here, again, the experience of the past may be illuminating.

(S) While the 1954 Geneva Conference was meeting, 500 Viet Minh PWs, aided by local Communist elements, broke out of a camp at Mytho in South Vietnam, and in the ensuing struggle 15 PWs were killed.[68] Later on, during the tense final week of negotiations, the French were obliged to use a naval vessel to suppress PW riots on the Ile aux Singes off the coast of North Vietnam.[69]

(S) Shortly after the Conference, the French reported from Saigon that "many" Viet Minh PWs objected to being turned over to the DRV (as was required in the Agreement); some had already rioted on ships carrying them to the North,

---

[67] Enemy letter dated 7 August [no year], signed by Thanh Trung of Area 7 Uprising Committee, captured by the First U.S. Air Cavalry Division, summarized in MACJ261, Bulletin No. 10,977, April 3, 1968, CDEC Doc Log No. 04-1236-68 (Confidential).

[68] U.S. Embassy Saigon, Weeka 26, June 26, 1954 (Secret).

[69] U.S. Embassy Saigon, Weeka 35, August 28, 1954 (Secret).

and further trouble was expected because 4,000 prisoners aboard ships headed for the Viet Minh regroupment zone could not be unloaded, the DRV having called a temporary halt to acceptance of returned PWs on the grounds that its reception facilities were overcrowded.[70] Just how much trouble was caused by Viet Minh PWs and CIs who objected to being turned over to the DRV is difficult to establish, as the French were reluctant to advertise the matter and thereby not only incur the ire of both the GVN and the DRV but also perhaps jeopardize the return of French Union PWs held by the Viet Minh.

(C) In the current situation, the greatest danger of prisoner riots may well arise after a cease-fire, in the not unlikely event that the South Vietnamese government takes the position that it will not release many of the 26,000 Viet Cong it now holds until South Vietnam has achieved a large measure of security and political stability.

8. DRV ATTITUDES TOWARD PW RELEASES

(C) It is not to be assumed that humanitarian reasons, a desire to abide by the Geneva PW Convention, or even commitment to an agreement reached during negotiations will induce the DRV to hand over all prisoners during the negotiations for a cease-fire, or promptly after a settlement has been reached. To rely on such a likelihood would be to ignore the Viet Minh's past tendency to use PWs in their custody as a means of gaining political objectives.

(U) Thus, it is doubtful that the Viet Minh would have released as many French PWs as they did, and as soon after the 1954 Conference as they did, had they not hoped

[70] U.S. Embassy Saigon, Tel. 937, September 9, 1954 (Secret).

thereby to obtain material concessions and political cooperation from the French. For example, in return for the prompt surrender of French prisoners the Communists may have hoped for a more generous allocation of equipment as the French withdrew from the North, the retention of French technicians who would operate utilities in the North, economic and cultural cooperation of the kind elicited in Pham Van Dong's letter to Prime Minister Mendès-France[71] at the close of the Geneva Conference, and France's support in ensuring that the general elections scheduled for 1956 would be held.

On the other hand, when it came to the French-African prisoners of war, the Communist interest was better served by their prolonged detention and brain-washing, which afforded the Viet Minh an opportunity to train those prisoners for future guerrilla warfare and subversive activities in Africa.

As for Vietnamese PWs, the DRV chose to retain permanently an estimated 15,000 to 20,000 (including deserters) to help meet North Vietnam's manpower needs for reconstruction of the country and expansion of the PAVN.

We may fairly assume that in the future, as in the past, North Vietnam's major considerations in dealing with prisoner releases will be material and political rather than moral and humane.

---

[71] Quoted by Georges Chaffard in Indochine: dix ans d'indépendance, Calman-Lévy, Paris, 1964, pp. 115-116 (translated from the French by the present author).

V. NEGOTIATIONS FOR THE RELEASE OF PRISONERS

1. PRISONERS OF VIETNAMESE NATIONALITY[72]

An Internal Affair

(U) Because the French High Command had both de jure and de facto authority over all French Union and Vietnamese Army forces in 1954, it was responsible for captured PAVN troops and for negotiating with the DRV for the release of both VNA prisoners of war and Vietnamese members of the French Union Forces.

(S) At present, the DRV, the VC, and the GVN have their own military commands and, among them, hold all prisoners of Vietnamese nationality, with the few exceptions mentioned earlier (14 North Vietnamese navy men held by the United States and 50 PAVN members held by the Laotians).[73] They will probably elect to follow in any future settlement the pattern established by the three Lao factions at the Geneva Conference of 1961-62 rather than that which emerged from the 1954 Conference. That is to say, they will insist that negotiations for the release of native prisoners, as well as the implementation of any agreement so reached, are internal matters, to be dealt with by the Vietnamese themselves without any outside interference.[74] (This attitude is likely to prevail even in the event of a coalition government.) The known disenchantment of all three Vietnamese parties with the ICC lends support to this view, as does

---

[72] The figures cited under this heading are based on official U.S. and GVN estimates.

[73] (U) As a result of fighting in the border areas, the Cambodians and the Pathet Lao also may be holding some South Vietnamese prisoners of war.

[74] (S) If the DRV continues to deny the presence of PAVN forces in South Vietnam throughout the negotiations, it may

their past rejection of the ICC's repeated suggestions, during the 1950s, that local Red Cross societies be used to investigate PW claims.

(S) The North Vietnamese government and the Viet Cong have undoubtedly placed a high price tag on U.S. prisoners -- higher, certainly, than a quid pro quo for the release of their own men. Therefore, the only phase of negotiations for the release of prisoners that is likely to involve actual "exchanges" of prisoners will be that dealing with Vietnamese nationals.

(S) It is difficult to estimate the relative bargaining potential of the three factions, because we have information only about prisoners of the GVN. Under the Chieu Hoi ("open arms") defector program, the GVN has released a very large number of Viet Cong and an undisclosed, but decidedly smaller, number of PAVN PWs. At present, it still holds about 10,000 Viet Cong PWs and 16,000 Viet Cong CIs, in addition to its 2,500 PAVN prisoners of war.[75]

(S) There is no reliable information about the exact number of South Vietnamese PWs and CIs held by the Communists. Nor do we know which and how many prisoners are being held in South Vietnam, in border areas of Cambodia and Laos, and in North Vietnam. Though from time to time the Viet Cong have released groups of 10 to 20 ARVN

---

let the Viet Cong carry the ball in seeking their release, or may eventually make a secret deal with SVN authorities.

[75](C) It is expected that many of these prisoners will be transferred to a camp on the island of Phu Quoc (in the Gulf of Siam), where the Diem government once maintained a large political "reeducation camp." The island has long been claimed by Cambodia.

prisoners.[76] neither the Viet Cong nor the North Vietnamese have ever revealed the total number they are holding.

(S) Nor has the GVN for its part compiled an estimate of ARVN members in enemy hands. The probable reason for this failure is that it is impossible now (as it was in 1954) to say how many of the army's missing men are PWs, how many have gone over to the enemy (be it voluntarily or because of VC pressure on their families), and how many have simply gone AWOL and returned to their villages.

The Possible Use of Dependents (C)

(S) If, at the close of hostilities, the GVN holds the larger number of enemy prisoners, it may be able to exploit its favorable bargaining position by bringing into the picture a new category of potential exchangees: dependents of those who in 1954-55 were regrouped north and south of the 17th Parallel.

(U) At the conclusion of the regroupment period, in 1955, the Canadian delegation to the ICC reported that the Commission had yet to take action "on most of the 11,422 first-party petitions received in the North." Many of these petitioners were dependents of either military personnel or civilian refugees who had chosen the South during the regroupment period. The families were divided because the DRV would not abide by the freedom-of-movement provisions in the Geneva Agreement. After the deadline for regroupment, ICC efforts to act on such petitions were unsuccessful, as the DRV refused to authorize additional departures.[77]

---

[76](U) These prisoners have been rank-and-file ARVN personnel. Captured ARVN officers and cadres (military, political, psywar) generally are not released.

[77]Vietnam, Fourth Interim Report. Canadian Amendment, p. 21, para. 9.

(S) As the GVN very likely will have the larger number of prisoners, it might take advantage of this fact by using, in particular, its PAVN captives to seek the release of those dependents in North Vietnam who still wish to move south. It may also perhaps try to include in such an exchange arrangement the dependents in North Vietnam of regroupee PWs -- former Southerners regrouped to the North in 1954-55 who, after being reinfiltrated into South Vietnam, became military prisoners but were freed under the Chieu Hoi program, and who at the end of hostilities express the wish to remain in the South.

(S) To obtain the reunification of these divided families in South Vietnam, the GVN might, as an additional inducement to the other side, offer to help transfer from South to North Vietnam the families of any Viet Cong and regroupee PWs[78] who wish to reside in North Vietnam or whom the GVN may decide to expel.

(S) Even if Hanoi were to reject these proposals as unacceptable, the GVN would derive a moral advantage from having advanced them, as they would have demonstrated South Vietnam's position as champion of humane solutions to some of the human problems created by the long war.

Probability of Releases

(U) If a coalition government should be formed in South Vietnam, either during negotiations or after conclusion of a settlement, it is doubtful that either side

---

[78](U) Many South Vietnamese who were regrouped to North Vietnam in 1954-55 left their families in the South expecting to rejoin them after the 1956 elections.

would release all its Vietnamese prisoners until a political settlement was well on the way to fulfillment.

(S) With respect to the GVN,[79] it is realistic to assume that, while it may make token releases of Viet Cong PWs, it will refuse to bolster the ranks of the NLF by releasing the roughly 26,000 VC prisoners it now holds, and will consider doing so only when the NLF demonstrates its readiness to abandon terror and violence as political means, demobilizes (or regroups and immobilizes) Viet Cong forces, and permits the central government peacefully to establish administrative control throughout South Vietnam.

(S) As for the PAVN prisoners now in South Vietnamese hands, the GVN may refuse categorically to release all of these until all PAVN units have been withdrawn from South Vietnam (a position that could dangerously strengthen any demands by the DRV and the Viet Cong that the United States withdraw all its forces from South Vietnam as a condition for the release of all U.S. prisoners).

(S) If, after a cease-fire agreement, the Viet Cong retain military control of significant portions of territory in South Vietnam pending a political settlement, they can be expected to hold on to some, or all, of the South Vietnamese PWs and CIs in their custody. Their motives in doing so might be to reeducate and use politically those who are susceptible to Communist indoctrination, and, in the case of experienced ARVN officers, GVN

---

[79] (S) The term "GVN" as used in this section refers to the South Vietnamese authorities who presumably will retain control of GVN prisoners, be it in the present GVN, in a more broadly-based government without NLF participation, or in a coalition with the NLF.

administrators, and hard-core anti-Communist leaders, simply to deny these men to the other side. Also, by holding on to important prisoners, they would retain a valuable asset with which to bargain for the release of all VC prisoners.

(S) Both sides will probably resort to some of the devices and subterfuges that were used after the 1954 settlement. Each may contend that many of the PWs claimed by the other side are actually ralliés or deserters; violators of criminal, civil, or military law; or men who were released prior to the cease-fire and whose subsequent whereabouts are unknown.

Conclusions

(S) If the previous behavior of the parties is a guide and the above estimates of possible future positions are correct, the exchange of prisoners of Vietnamese nationality will undoubtedly be a long-drawn-out process that could extend well beyond the time it would take the United States to secure the release of all U.S. and allied PWs.

(S) In view of this probability, of the foreseeable recalcitrance on the part of the GVN as well as the Communists, and of the very limited ability of an outside power to exert any influence on the parties that could appreciably affect the exchange of Vietnamese prisoners of war, the United States would seem well advised to support the principle of separate negotiations for the release of foreign and native prisoners. In fact, we might go so far as to encourage the Vietnamese to conduct their own negotiations on prisoners, handle their own exchanges, and decide among

themselves whether to ask for assistance from the ICC or any other international body.

2. U.S. AND ALLIED PRISONERS

(S) The DRV, the Viet Cong, and the Pathet Lao will very likely insist upon dealing directly, separately, and solely with the United States as regards the release of U.S. prisoners. Since the latter constitute one of the Communists' greatest bargaining assets, we may assume that the price for the release of American PWs will be commensurately high and could take the form of political, military, and/or monetary demands, which are certain to rise if the United States gives signs of being overly eager to come to terms.

(S) As of April 1968, according to U.S. official estimates, the situation with respect to U.S. and allied prisoners was approximately as follows:

U.S. Prisoners of War

1. Held by the DRV: Confirmed (Maximum total, 400)	250
2. Held by the VC: Estimated (Maximum total, 280)	65 to 100

U.S. Civilians

1. Held by the VC: Estimated	20
2. Held by the PL: Confirmed	6

Allied Prisoners of War

1. Held by the VC: Confirmed	
South Koreans	20
Thai	2
Australians or New Zealanders	5

Possible Communist Terms

(S) Once substantive negotiations begin, the NLF may offer to release some U.S. prisoners, though probably not all, in return for admission to the peace talks, if not as a co-equal of the GVN delegation then at least as an independent party rather than a subordinate branch of the DRV delegation.

(S) It is also possible, on the other hand, that the NLF will claim such a seat at the peace table as its rightful due that requires no concessions on its part.

(S) Then, again, the NLF may make token releases of U.S. prisoners in exchange for American support for NLF participation in a preelection coalition government and recognition of the NLF as a legitimate political party. (This last step presumably would require amendment of Article 5 of South Vietnam's Constitution, which prohibits any activity designed to promote communism in the Republic of Vietnam.) It is doubtful, however, that the Viet Cong would release all U.S. prisoners to achieve these results, for they can reasonably expect to attain the same ends by other means while using U.S. prisoners to achieve other objectives.

(S) Most likely, the Viet Cong, with DRV support, will demand a major (perhaps even the total) withdrawal of U.S. and allied forces as their price for the release of all U.S. and allied prisoners.

(S) In fact, by setting this price the Viet Cong might hope to attain their political goals most rapidly. For the United States presumably will not withdraw until South Vietnam has an appreciable degree of military and political stability, while the Viet Cong will undoubtedly

be able to keep the pot boiling until they reach their political ends. Thus, by tying the release of American prisoners to a United States withdrawal, the Viet Cong may hope to induce the United States to prevail upon the GVN to make political concessions to them.

(S) A VC directive, captured in August 1967, that provided guidelines for the treatment of U.S. and allied prisoners contained the following enlightening statements: "There are also some cadre who do not want to escort the prisoners due to fear of hardships. They willingly create occasions for the prisoners to escape in order to kill them. As mentioned before, if many US soldiers are captured, our political struggle will have greater influence. Therefore, we should try to capture US prisoners and evacuate them to our base."[80]

Possible U.S. Offers

(S) A major problem for the United States will be to determine both how far it can go in making concessions to secure the release of U.S. prisoners and what terms it can offer (or accept) without alienating its allies in South Vietnam and the South Vietnamese themselves.

(S) It would, of course, be preferable for the United States to confine itself to concessions that required neither concurrence nor action on the part of the GVN.

(S) For example, the United States might agree to withdraw X number of its troops from Vietnam for each

[80] From "Directive on the Execution of the Policy toward Prisoners and Surrenderers(U)," by the Political Staff of the SVN Liberation Army, date unknown, a document captured in South Vietnam on August 22, 1967, and issued in translation on January 9, 1968, by COMUSMAV (CDEC) as Department of Defense Intelligence Information Report No. 6-027-0239-68, CDEC Doc Log No. 08-3652-67, p. 5, paras. 5 and 6 (Confidential).

American prisoner released, either in a single operation immediately after the cease-fire or in instalments. Being offered such a choice might encourage the Communists to release all the prisoners they now hold, and to do so rapidly. On the other hand, the United States might consider the price too high, unless the number and the timing of troop withdrawals could be made to coincide with any planned deescalation, and -- equally important -- unless any suggestion that the two events (U.S. withdrawals and PW releases) were interdependent could be avoided.

(S) However, by demanding a willingness to withdraw some U.S. troops in exchange for American prisoners, the United States runs the risk of encouraging the DRV/VC side to demand the withdrawal of all U.S. troops as a condition for the release of all U.S. prisoners.

(S) A quid pro quo that the DRV is likely to demand -- and one that the United States may want to consider accepting -- is the payment of "reparations" to North Vietnam in exchange for U.S. prisoners.

(S) In 1966, after Hanoi had made (and then seemingly dropped) its threat to try U.S. pilots as "war criminals," it established a Committee of Inquiry to investigate "crimes resulting from American air raids." Presumably, these could be punishable as "crimes against the Vietnamese Nation" under a decree issued by the DRV in January 1953, which included among the acts calling for imprisonment or death the destruction of water works and damage done to public utilities or to areas vital to the security of the nation.

(U) The Committee of Inquiry consists of top officials of the ministries of Health, Foreign Affairs, and Security, the Board of Statistics, the National Reunification Committee, and the Political Department of the Army, as well as the President of the People's Supreme Court and and Chief of the PAVN Liaison Mission to the ICC, Colonel

Ha Van Lau (currently the second-ranking member of the DRV negotiating team in Paris).

(U) Since 1966, the Committee has been engaged in compiling information, village by village, on material and human damage caused by U.S. bombing.[81]

(S) Whether the DRV plans to try U.S. pilots in "People's Courts," using the data compiled by the Committee to support criminal charges, or whether it expects to use the information to support claims against the United States for reparations, is, of course, not known. We cannot rule out the possibility that Hanoi will try to appear to be keeping the two issues separate while actually tying them together; it could do so by first presenting the claims and then, if the United States refused to pay, proceeding with the trials, without ever admittir that any correlation existed between the issues.

(S) Should the United States agree to pay reparations, it might be able to obtain from the DRV a complete list of U.S. prisoners, particularly if payments were in any way tied to numbers of prisoners. Releases of prisoners probably would take place in instalments as reparation payments were received. If reparations were paid in a lump sum, Hanoi might simultaneously release all American prisoners.

(S) The United States could avoid giving the appearance of paying reparations or ransom money if it could

[81](S) It is worth noting that the Viet Cong also called U.S. and allied PWs "war criminals." The VC directive mentioned on p. 59 (fn) above, stated categorically: "Prisoners who are Americans and soldiers of allied countries are all war criminals. The US Government, in provoking war with our government, does not proclaim it. Therefore their soldiers have no right to enjoy the POW's

reach its agreement with the DRV in private, and if all funds paid out to Hanoi were then publicly labeled part of the U.S. contribution to a postwar recovery program of the kind proposed by President Johnson in his regional development plan at Johns Hopkins University in April 1965.

Conclusions

(S) Of all the alternatives mentioned above, an offer of material assistance to the DRV for postwar recovery would probably be the least apt to distress the South Vietnamese -- provided, of course, that conditions in general are peaceful and that the South, too, receives ample U.S. funds for recovery.

(S) No matter what terms are agreed upon, it would be unduly optimistic to believe that the DRV and the VC will release all U.S. prisoners immediately after conclusion of an agreement in the expectation that the United States will meet its military, political, or monetary commitments. More likely, they will insist on awaiting concrete evidence of U.S. concessions before releasing the majority of American prisoners, and will retain some of them until all U.S. commitments have been fulfilled.

(S) After the terms for the release of prisoners have been agreed to, the DRV and the Viet Cong may be willing -- eventually -- to turn over all foreign PWs (U.S. and allied) to representatives of their respective governments (or to the United States) with or without ICC

---

regulations." (DoD Intelligence Information Report No. 6-027-0239-68, p. 5, para. 2.)

control. But they probably would oppose control by the International Red Cross, whose past efforts to obtain their cooperation and adherence to the Geneva PW Convention have repeatedly failed.

3. THE ROLE OF A THIRD PARTY

(C) Although we can expect the DRV to want to deal only with the United States in arriving at terms for the release of U.S. prisoners, the use of a non-Communist third party in handling certain aspects of the prisoner issue may be advantageous for the United States and acceptable to the DRV. For example, such a third party, if experienced in dealing with the DRV, might be able, first, to secure reliable information about the number and physical condition of American prisoners in North Vietnam and, later, to obtain the DRV's permission to search for and remove the bodies of U.S. pilots who have been shot down or have died in captivity.

(C) In exploring possible choices of third-party mediators, the United States would probably find that the French would be willing and well qualified to assume this function and, furthermore, that they would be acceptable to the DRV.

(C) In 1967, the British Consul in Hanoi reported that French Grave Registration personnel had more freedom to circulate in North Vietnam than had the nationals of any other non-Communist nation. And such personnel are to this day operating in North Vietnam, seeking and repatriating bodies of members of the French Union Forces who were lost prior to the 1954 Geneva settlement or died in captivity thereafter.

(S) The man primarily responsible for securing DRV cooperation has been Jean Sainteny,[82] de Gaulle's emissary to Hanoi after World War II, cosigner with Ho Chi Minh of the Franco-Viet Minh Accord of 1946, Mendès-France's Delegate General in Hanoi immediately after the 1954 Geneva Conference, and a frequent French emissary to the DRV since then.

(S) If the United States so requested, the French government might be willing to have Sainteny use his good offices to help recover American pilots living and dead in North Vietnam -- partly, perhaps, in gratitude for the repatriation by the U.S. Air Force of 500 French prisoners wounded at Dien Bien Phu.

(U) At the conclusion of that airlift, which had been conducted while the Geneva Conference was going on, French Premier Mendès-France sent the following message to Secretary Dulles: "At the time when the repatriation of 500 wounded from Indochina is being completed, I wish to express to you the gratitude of the French Government and of the peoples of the French Union for the humanitarian and generous deed performed by your country. Thanks to the United States, our wounded have not only been brought back to their families under the best conditions of comfort and speed but they have also been throughout their trip the object of devoted care and of marks of friendship which will long live in their memories."[83]

---

[82] (S) The writer recently received a letter from a member of the French government's Economic and Social Council, a former Gaullist Senator and Deputy, who stated with respect to the French Graves Registration Service in North Vietnam: "Everything has not yet been settled (the repatriation of bodies has not been completed) and many questions have been dealt with on a 'quasi-informal' basis between Sainteny and the Government of North Vietnam."

[83] U.S. Department of State, Press Release No. 391, July 10, 1954.

CONFIDENTIAL

CUMENT CONTROL DATA

RIGINATING ACTIVITY THE RAND CORPORATION	2a REPORT SECURITY CLASSIFICATION SECRET
	2b. GROUP III

REPORT TITLE

PRISONERS OF WAR IN INDOCHINA (U)

SECRET

AUTHOR(S) (Last name, first name, initial)

Nutt, Anita Lauve

REPORT DATE January 1969	6a. TOTAL No. OF PAGES 73	6b. No. OF REFS. ---
CONTRACT OR GRANT No. DAHC15 67 C 0142	8. ORIGINATOR'S REPORT No. RM-5729-1-ARPA	

9. AVAILABILITY/LIMITATION NOTICES

No Foreign Dissemination

9b. SPONSORING AGENCY

Advanced Research Project Agency

). ABSTRACT

(C) This revision of RM-5729-ARPA, October 1968, considers the issue of the release and exchange of prisoners of war and civilian internees, likely to be of major importance in terminating the Vietnam war. It critically examines prisoner disposition in two previous settlements concerning Indochina, the Geneva Agreements of 1954 and the Laos Protocol of 1962, and elicits participants' probable attitudes in forthcoming negotiations. All Vietnamese factions are likely to oppose the participation of non-Vietnamese powers in negotiations concerning Vietnamese prisoners. The Communists will probably (1) avoid submitting complete lists of prisoners, (2) continue to deny North Vietnamese Army activity outside North Vietnam, (3) oppose giving released prisoners a choice of destination, (4) try to sow distrust between the U.S. and GVN, and (5) in the actual release, be guided by political motives rather than terms of the agreement. A third party could be useful in resolving practical aspects of prisoner negotiation. A possibility is Jean Sainteny, frequent French emissary to North Vietnam.

11. KEY WORDS

Laos
Cambodia
Vietnam
Indochina
Asia
Viet Cong
France
International relations
Military planning
Policy analysis
Treaties

SECRET

CONFIDENTIAL

END

DATE FILMED

3 69